

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

CARNEGIE INSTITUTION OF WASHINGTON,

M7D CORPORATION,

Plaintiffs,

v.

FENIX DIAMONDS LLC,

Defendant.

Civil Action No. 1:20-cv-00200-JSR

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
WITHDRAW AS COUNSEL FOR PLAINTIFFS
CARNEGIE INSTITUTION OF WASHINGTON AND M7D CORPORATION**

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Matthew J. Moffa Esq., Terrence J. Wikberg, Esq., Michael A. Chajon, Esq., Amy E. Simpson, Esq., Kevin Patariu, Esq., Michelle Umberger, Esq., Sarah Fowler, Esq., and the law firm of Perkins Coie LLP (collectively, the “Firm”), counsel of record for Plaintiffs Carnegie Institution of Washington (“Carnegie”) and M7D Corporation (“M7D,” and, collectively with Carnegie, “Plaintiffs”) in the above-captioned action, respectfully submit this memorandum of law in support of its motion for an order pursuant to Local Rule 1.4 of the Local Civil Rules for the Southern District of New York and Rule 1.16(c) of the New York Rules of Professional Conduct (“RPC”) granting the Firm leave to withdraw as counsel for Plaintiffs.

PRELIMINARY STATEMENT

The Firm seeks leave to withdraw as counsel of record for Plaintiffs because professional considerations support termination of the representation. If the Court orders that the Firm disclose confidential client information protected by RPC 1.6 to support withdrawal, the Firm requests an *in camera* examination to do so. *See* New York State Bar Association Committee on Professional Ethics, Opinion 1057 (6/5/15) at ¶ 18.

ARGUMENT

District courts have wide discretion in deciding to grant a motion for an attorney’s withdrawal. *See United States v. Estate of Wiesner*, 2017 WL 1450594, *6 (E.D.N.Y.), *report and recommendation adopted*, 2017 WL 1458724 (E.D.N.Y. 2017); *Associated Plastic Surgeons & Consultants, P.C. v. Radiance Medspa Franchise Grp., PLLC*, 2008 WL 11417535, at *2 (E.D.N.Y. Sept. 8, 2008).

Withdrawal of counsel from representation is governed by Rule 1.4 of the Local Civil Rules for the Southern District of New York, which states:

An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the Court and may not withdraw from a case without leave of the court granted by order. Such an order may be granted only upon a showing by affidavit or otherwise of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the

calendar and whether or not the attorney is asserting a retaining or charging lien. All applications to withdraw must be served upon the client and (unless excused by the Court) upon all other parties.

Local Civ. R. 1.4.

This Court may also consider the New York RPCs, including RPC 1.16(c), which permits an attorney to withdraw from representing a client in certain circumstances applicable here.

Courts in the Second Circuit “analyze two factors in determining whether to grant a motion to withdraw as counsel of record: (1) the reasons for withdrawal and (2) the impact of the withdrawal on the timing of the proceeding.” *Capak v. Smith*, 2021 WL 1103375, at *1 (S.D.N.Y. Feb. 2, 2021).

I. Professional Considerations Under RPC 1.16(c) Constitute Sufficient and Justifiable Reason to Grant a Withdrawal of Counsel

Factors under RPC 1.16(c) apply here and permit withdrawal of counsel. The Firm’s obligations under RPC 1.6 prevent the Firm from disclosing M7D and Carnegie’s confidential information absent a court order to specifically disclose that information *in camera*. See New York State Bar Association Committee on Professional Ethics, Opinion 1057 (6/5/15) at ¶ 18.

II. Withdrawal of Counsel Will Not Prejudice Plaintiffs or Unduly Delay the Prosecution of this Action

The second factor that courts consider in determining whether withdrawal of counsel should be permitted is “whether the prosecution of the action is likely to be disrupted by the withdrawal of counsel.” See *Capak v. Smith*, 2021 WL 1103375, at *1.

Here, Carnegie has retained substitute counsel to represent it in this matter. M7D is also in the process of identifying substitute counsel.

CONCLUSION

For all of the foregoing reasons, the Firm respectfully requests that this Court grant its motion to withdraw as counsel for Plaintiffs. Should the Court order disclosure of client

confidential information protected by RPC 1.6, the Firm respectfully requests that it be permitted to do so *in camera* pursuant to New York State Bar Association Committee on Professional Ethics, Opinion 1057 (6/5/15).

Dated: September 18, 2023

Respectfully submitted,
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/s/ Matthew J. Moffa

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